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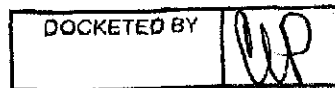
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Direct Line: 602-542-3935  
Fax: 602-542-0752  
E-mail: WMUNDELL@CC.STATE.AZ.US

ARIZONA CORPORATION COMMISSION

January 2, 2002

Arizona Corporation Commission  
**DOCKETED**

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ARIZONA CORPORATION COMMISSION  
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RECEIVED

Teresa Wahlert  
Vice President – Arizona  
Regional Vice President  
Qwest Communications  
3033 N. 3<sup>rd</sup> Street, Suite 1001  
Phoenix, Arizona 85012

Re: Docket No. T-00000A-97-0238 Request for Immediate Publication of Tariff's Applicable to Residential and Small Business Customers

Dear Ms. Wahlert:

Qwest Corporation has reiterated its position that its tariffs filed and approved by the Arizona Corporation Commission are the exclusive determinant of the rights and liabilities between itself and its customers. Qwest, on page 10 of its Motion to Dismiss in case number C 20014779 in the Pima County Superior Court, relies upon the filed tariff doctrine as a defense and states as follows:

"Applying the doctrine, courts around the country have held that properly filed tariffs bar suits against regulated utilities involving either direct or indirect challenges to their filed rates and terms. See, e.g., *Macro Supply Co. v. AT&T Communications*, 875 F.2d 434, 435-36 (4<sup>th</sup> Cir 1989); *Evanns*, 229 F.3d at 840 ("customers are charged with notice of the terms and rates set out in [a] filed tariff and may not bring an action against a carrier that would invalidate, alter or add to the terms of the filed tariff"). For example, in *Marcus v. AT&T Corp.*, 138 F.3d at 64, the Second Circuit held that the filed rate doctrine precluded state law claims for false advertising, "[s]ince the defendants' tariffs were at all times a matter of public record and were in no way concealed." Similarly, in *Cahnmann v. Sprint Corp.*, 133 F.3d 484, 490 (7<sup>th</sup> Cir. 1998), the Seventh Circuit rejected state law misrepresentation and consumer fraud claims, noting that the filed tariff doctrine sometimes compels harsh results."

"Most significantly, the U.S. Supreme Court has confirmed that, "even if a common carrier intentionally misrepresents its rate and a customer relies on the misrepresentation, the carrier cannot be held to the promised rate if it conflicts with the published tariff." *AT&T Co. v. Central Office Telephone, Inc.*, 524 U.S. 213, 222 (1998) (citing *Kansas City S. R.R. Co. v. Carl*, 227 U.S. 639, 653 (1913)). The filed tariff doctrine also bars claims that relate to terms and conditions of a tariffed service, and not just the rate itself."

Without conceding the all encompassing characteristics of tariffs as argued by your counsel in the Pima County Superior Court proceeding, I do believe it is incumbent upon Qwest to immediately begin to include critical information regarding tariffs in every directory published by Qwest and its affiliates. This tariff information, at the very least, should also be included on Qwest's and its affiliates' web pages.

Please provide me with Qwest's official schedule request publication deadlines for all Arizona directories for the upcoming service year. I would like your representatives to meet with our Utilities Director in the immediate future to develop an agreed upon tariff insert or summary so that consumers can readily have access to what Qwest representatives work with in replying to complaints, questions and concerns regarding their telephone services.

Since it is the company's position that customers are deemed to have constructive knowledge of the rates and other tariff provisions, I want those same customers to have an easily accessible published source of what they are supposed to know. In other words, I want Arizona customers to have actual notice of the tariffs that affect them in their dealings with Qwest.

I'm sure you will agree that my request will provide a bare minimum of fairness and notice to those less experienced in dealing with issues impacted by the tariffs.

I look forward to your timely response to this request so that Mr. Johnson and his staff and your representatives can work towards developing language for inclusion in the next round of directories.

Sincerely,



William A. Mundell  
Chairman, Arizona Corporation Commission

cc: Commissioner James Irvin  
Commissioner Marc Spitzer  
Earnest Johnson, Utilities Director ACC  
Chris Kempley, Chief Counsel, ACC  
Del Smith, Telecommunications Engineer ACC